THE HON'BLE Ms. JUSTICE G. ROHINI

COMPANY APPLICATION No.337 OF 2010
AND
COMPANY APLICATION (SR) NO.2377 OF 2010
IN
COMPANY APPLICATION No.1226 OF 2007
IN
COMPANY PETITION No.38 OF 2005

Date: 14.02.2011

C.A.No.337 of 2010

Between:

Sri B.H.S.R. Bharadwaja,
Hyderabad.

…Applicant

and

M/s. Visveswar Finance & Chit Funds (P) Ltd.,
Rep., by its Official Liquidator,
Hyderabad.

….Respondent

C.A.No.2377 of 2010

Between:

Sri B.H.S.R. Bharadwaja,
Hyderabad.

…Applicant

and

M/s. Visveswar Finance & Chit Funds (P) Ltd.,
Rep., by its Official Liquidator,
Hyderabad.

….Respondent

THE HON'BLE Ms. JUSTICE G. ROHINI

COMPANY APPLICATION No.337 OF 2010
AND
COMPANY APLICATION (SR) NO.2377 OF 2010
IN
COMPANY APPLICATION No.1226 OF 2007
IN
COMPANY PETITION No.38 OF 2005

COMMON ORDER :

By order dated 15.11.2005 in C.P.No.38 of 2005, M/s. Visveswar Finance & Chit Funds (P) Limited was directed to be wound up and the Official Liquidator attached to this Court was appointed as Liquidator of the said company.

The applicant herein was the prized subscriber in respect of Chit Ticket No.04 of Chit Group VCKL 1/10 valued at Rs.1,00,000/- payable for a period of 50 months at the rate of Rs.2,000/- every month. After paying 32 monthly subscriptions totalling Rs.64,000/-, the applicant lifted the chit and received the bid amount, but thereafter did not pay the balance 18 months' subscription amounting to Rs.36,000/-. Hence the Official Liquidator, representing the company-in-liquidation, filed Company Application No.1226 of 2007 under Section 446 (2) (b) of the Companies Act, 1956 against the applicant herein and the sureties for recovery of a sum of Rs.36,000/- along with interest at 12% p.a. w.e.f. 26.11.2002. Despite notice, the applicant herein and others did not appear and therefore this Court, by order dated 22.08.2008 while setting them ex parte allowed C.A.No.1226 of 2007 for a sum of Rs.35,800/- with interest at the rate of 6% p.a.

The present applications have been filed by the respondent

No.1 in C.A.No.1226 of 2007 (the Prized subscriber) with a prayer to set aside the ex parte order dated 22.8.2008 after condoning the delay of 662 days in filing the application.

It is stated in the affidavit filed in support of the application that he could not pay the further monthly subscriptions as the collection agent of the company in liquidation was not in touch and moreover since he was working in the State of Assam, he could not even contact the sureties, who were stated to have been served with notices in the proceedings initiated by the Official Liquidator. Thus it is pleaded that his failure to appear in C.A.No.1226 of 2007 was only due to communication gap and it was neither wilful nor wanton.

Having heard the learned counsel for the applicant as well as the learned counsel appearing for the Official Liquidator and keeping in view the reasons explained in the affidavit filed in support of the applications, I am satisfied that sufficient cause has been made out for non-appearance of the applicant in C.A.No.1226 of 2007 and the further delay in taking the steps for setting aside the ex parte order dated 22.08.2008.

Accordingly, the delay of 662 days in filing the application to set aside the ex parte order dated 22.8.2008 is condoned and the said order is hereby set aside.

In the result, C.A.No.1226 of 2007 is restored to file. Both the applications are accordingly allowed. No costs.

_____

G. ROHINI, J.

Dt. 14.02.2011

gbs